

REMARKS

This application has been carefully reviewed in light of the outstanding Office Action. Claims 2-17, 19 and 21-44 are now in this application, of which Claims 4-12, 15, 17 and 21-32 have been withdrawn from examination as being directed to non-elected species. Claims 13 and 33 have been amended to define still more clearly what Applicant regards as his invention, and corresponding changes have been made to Claim 21, drawn to a non-elected species. Claims 43 and 44 have been added to assure Applicant of a full measure of protection. Both Claims 43 and 44 are believed to read on the elected species. In addition to those claims, Claims 2, 13, 19 and 33 are independent (of the claims under consideration). Favorable reconsideration is respectfully requested.

Claims 2 and 19

The Office Action rejects these claims as being allegedly anticipated by U.S. Patent 5,423,858 (Bolanos et al.). Anticipation requires that each element recited in the claim be found, either explicitly or inherently, in the reference. Both of these claims, however, recite a feature that has not been pointed out by the Examiner in *Bolanos*, and that it is believed is in fact absent from that patent. The Office Action states that Applicant has not defined the shape of the augment, taking the view that Applicant's recitation that the augment has a shape that is to be imparted to a portion of the patient's tissue is merely a statement of intended use and does not define a shape. Without conceding that view to be correct, Applicant submits that Claims 2 and 19 each specify a list of shapes one of which is present in the claimed object. Those claims both recite that the implant is one of a list of types of such implants that are used in rhinoplasty, each of which types has a specific shape. More particularly, Claim 2 states that the rhinoplastic augment is "one of a button, a dorsal augment, a unilateral tip, a bilateral tip, a pair of tips with a Y-connector joined to the tips, a nasal vault reconstruction module, a heart-shaped augment, a septal perforation

module and a mesh element". Applicant notes that the outstanding Office Action fails to identify any structure in *Bolanos* that in the Examiner's view would be read on by any of the shapes in the quoted list. If one or more of those shapes are found in that patent, of course, the claim is anticipated (assuming as the Examiner believes that the other terms of the claim are also shown there). It is submitted, however, that none of those shapes is disclosed in *Bolanos*. Moreover, while this point was made in Applicant's last Amendment, the outstanding Office Action does not appear to have addressed this point.¹

Accordingly, it is believed clear that Claims 2 and 19 are not anticipated by *Bolanos*.

Further, it is not seen why one of merely ordinary skill would have considered making or using a structure as claimed in Claims 2 or 19, based on anything in *Bolanos*.

For at least these reasons, therefore, it is believed that Claims 2 and 19 are allowable over *Bolanos*.²

Claims 13 and 33

Claim 13 has been amended, as suggested in the Office Action, to clarify further the structure of the female connector element. According to that claim, "said female connector element comprising material extending from said strut in a second direction that is perpendicular to said first direction and to said plane and defining a receptacle exhibiting a degree of resilience and at least a portion of which extends from said plane [emphases added]". Applicant submits that nothing in *Bolanos* would have led

¹ Applicant notes that in this respect at least, this Office Action is incomplete, and this rejection, if repeated or supplemented with additional art, should certainly not be made final.

² It is noted that the Office Action states the that obviousness rejection is based on a "Bolona" reference. Applicant understands that "Bolanos" is intended.

of merely ordinary skill to this structure. The part 220 in *Bolanos* cited by the Examiner as corresponding to the strut of Claim 13 has a single hole in it, and neither that hole nor any other portion of element 220 has any material extending from the plane of element 220, much less defining a receptacle that exhibits a degree of resilience and at least a portion of which extends from that plane, as recited in Claim 13.

Accordingly, Claim 13 is believed to be allowable over *Bolanos*.

Independent Claim 33 has been amended in the same fashion as Claim 13, and is hence also believed to be allowable.

Claims 43 and 44

Independent Claim 43 is presented as reading on the elected species, and also being generic to withdrawn Claim 21 and its dependent claims, so as to act as a linking claim at such time as it may be found to define patentable subject matter. Claim 43 is directed to a rhinoplastic surgical object that has a connector element, and that includes a strut, the connector element including an element selected from the group consisting of (1) a female connector element and (2) a male connector element. According to this claim the female connector element has the structure recited in Claims 13 and 33, and accordingly this claim also is believed to be allowable over *Bolanos*.

Independent Claim 44 is directed to a rhinoplastic surgical kit comprising an augment, at least two implantable struts each having a first connector element, and at least one implantable element having a second connector element, where the first and second connector elements are adapted to engage each other in such manner as to secure themselves together without use of screws. Claim 44 recites the two struts as each having at least a portion lying in a plane, and recites that the first connector element of each strut comprises material extending from the strut in a direction that is perpendicular to the plane of the strut and defining a receptacle exhibiting a degree of resilience and at least a portion

of which extends from that plane (as in Claim 13). The second connector element comprises material having a shape and size to be received snappingly in either of the receptacles. This claim also recites that the first and second struts and the implantable element are provided in said kit with the first and second connector elements not engaging each other. This claim does not specify the shape of the augment, and thus encompasses the elected species.

A review of the other art of record has failed to reveal anything which, in Applicant's opinion, would remedy the deficiencies of the art discussed above, as a reference against the independent claims under consideration herein. Those claims are therefore believed patentable over the art of record.

The other claims under rejection in this application are each dependent from one or another of the independent claims discussed above and are therefore believed patentable for the same reasons. Since each dependent claim is also deemed to define an additional aspect of the invention, however, the individual reconsideration of the patentability of each on its own merits is respectfully requested.

Applicant respectfully requests favorable reconsideration and early passage to issue of the present application, including rejoinder of the claims directed to non-elected species.

Applicant's undersigned attorney may be reached in our New York office by telephone at (212) 218-2100. All correspondence should continue to be directed to our address given below.

Respectfully submitted,

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